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Douglas R. Peterson

Registration No. 53,458

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/746,746  
Applicant : Stephen D. Ainsworth, E. Tina Cheng  
Filed : 12/22/2000  
Art Unit : 3731  
Examiner : Jessica R. Baxter  
Title : INTRAVASCULAR STENT WITH VARYING LINK GEOMETRY  
FOR FLEXIBILITY  
Docket No.: : ACS-54804 (2357P)  
Customer No. : 24201

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

PETITION TO REVIVE UNAVOIDABLY ABANDONED

APPLICATION UNDER 37 C.F.R. §1.137(a)

Dear Sir:

The Commissioner is hereby petitioned to revive the above application on the basis of unavoidable abandonment. Applicant believes that the above-identified application became abandoned on the mailing date of an Advisory Action, dated June 25, 2004. The six-month period for response to the final Office Action ended on June 22, 2004. The delay in filing the required reply was unavoidable and this petition is being filed pursuant to 37 C.F.R. 1.137(a).

## STATEMENT OF FACTS

A final Office action was issued by the U.S. Patent Office on December 22, 2003 for which a response was filed on February 13, 2004, within the first two months after the mailing of the final Office action. After not receiving an Advisory Action for some time, the attorney for the applicants called the Examiner on June 14, 2004. During that telephone conference, the Examiner stated that she was unaware that a response had been filed to the final Office action. After a review of the file, the Examiner stated that the response to the final Office action was entered into the file, but that it was never transferred to her, hence the delay. The Examiner also stated that she would prepare and send an Advisory Action to applicants within two weeks.

An Advisory Action was subsequently issued on June 25, 2004, indicating that the proposed amendment would not be entered because it presented additional claims without canceling a corresponding number of finally rejected claims. The Advisory Action was issued after the six-month period for response to the final Office Action, which ended on June 22, 2004. Therefore, applicants believe this request for petition to revive an unavoidably abandoned application is proper since failure to prosecute by the required date was not feasible given the Advisory Action's date. Also, this information could not be confirmed by the applicants on PAIR because of a problem with the linkage between the application serial number and the law firm customer number (see fax dated 6-23-04, enclosed).

## WITHDRAWAL OF HOLDING OF ABANDONMENT

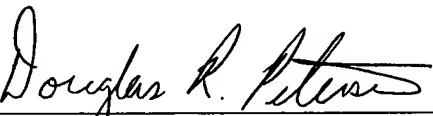
In view of the Statement of Facts, applicants request that the holding of abandonment of application 09/746,746 be withdrawn.

Pursuant to 37 CFR 1.37(a), failure to prosecute can be remedied by the filing of a continuing application. Applicants hereby concurrently submit, together with the present Petition, a Request for Continued Examination (RCE) and corresponding Amendment, additional transmittals and documentation as indicated, payment of the RCE fee (\$790) and the Petition Fee (\$110).

Applicants believe the petition properly designates unavoidable abandonment. However, in the event that the Commissioner disagrees with the designation of unavoidable, please evaluate the statement of facts as to an unintentional abandonment and withdraw the holding of abandonment per the correct designation. The Commissioner is authorized to charge any additional fees that may be required by this paper to Deposit Account No. 06-2425.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

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